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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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07/29/2004

Senniger, Powers, Leavitt & Roedel
One Metropolitan Square, 16th Floor
St. Louis, MO 63102

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

17

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,457

Applicant(s)

MORMAN ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4-16-04/5-6-04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-47,50-69 and 72-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-47,50-69 and 72-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. The Office Action is based upon Applicant's Amendments to the description, abstract and Figures filed 11-5-03 and the claims apparently filed 4-16-04 and accepted 5-6-04, a copy of which was resubmitted 7-13-04.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

Drawings

3. The drawings were received on 11-5-03. These drawings are not accepted by the Examiner because in Figure 3 the portion of 8 at the bottom not covered by the topsheet and the line from the lower numeral 8 should not be dashed because they are seen due to the cut away portion. The remainder of the drawing changes are approved and if submitted without the objected to change would be approved. Therefore, the previous drawing objections are not repeated based on such approval of the remainder of the changes. The replacement drawings have been placed in the file but approval thereof is held in abeyance until such time as all the drawing changes are approved.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the affixment as claimed in claims 46-47, 67 and 69 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Contrary to Applicant's remarks the Figures still don't show the claimed structure, see discussion of the claims *infra*.

Description

5. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the

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claims are not commensurate, see MPEP 608.01(d) and 1302.01. Applicant's remarks with respect to such have been noted. 2) On page 6, lines 15-20, Applicant defines the terminology "affixed" as including both direct and indirect affixing. Therefore, if a first structure is "affixed" to a second structure at all, the entire first structure is "affixed" because its entirety is either directly or indirectly joined to the second structure. Therefore, the first structure is either entirely affixed or not affixed at all as "affixed" is defined. Therefore it is unclear how the absorbent body is "affixed", i.e. secured, along "at least a portion" or "at least in part" as claimed in the claims, specifically 44, 66, 68 and 86, or how a percentage less than 100% but greater than 0% of the outer surface is "affixed" as claimed in claims 49 and 69. Also note page 31, lines 8 et seq of the description. Therefore, a clear consistent description of "affixed" should be set forth throughout the description and claims.

Appropriate correction is required.

Claim Objections

6. Claims 47 and 69 are objected to because of the following informalities: in claims 47 and 69, line 3, after "area," --and-- should be inserted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claims 44-47, 50-69 and 72-87 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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As already discussed supra, due to the definition of “affixed” and like terms on page 6, and the terminology “at least a portion” or “at least in part” in all the claims and the percentages in claims 47 and 69, it is unclear what the structure defined by the terminology “affixed” is.

Claim Language Interpretation

8. The terminology of the claims is interpreted in light of the definitions set forth on pages 3-8. Due to the lack of clarity with regard to the terminology “affixed”, see discussion supra, any amount of affixment will be interpreted as meeting the terms of the claims. It is noted that on page 31, direct surface attachment of between about 25% and 95% has not been patentably distinguished, i.e. described as being critical, from direct surface attachment of less than about 95%.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 44-47, 50-54, 56-65 and 86-87 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens ‘709.

Claim 44: See Figures, stretchable chassis is 20, see col. 4, lines 15-31, an absorbent body narrower than the chassis is 22, 42, 43, 44, 38 which is affixed at 26, 28, 50 and/or 45, see col. 7, lines 20-25 and the Claim Language Interpretation section supra, and the surface 42 thereof lies against the wearer during use, see Figures. It is the Examiner’s first position that the

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reference teaches the chassis is stretchable independent of the absorbent body, see, e.g., col. 7, lines 5-7 and 20-25 and col. 4, lines 32-48. In any case, the Examiner's second position, the Stevens reference teaches all the claimed structure. Claim 44 on the last three lines defines properties, capabilities and function of such claimed structure. Therefore there is sufficient factual basis to conclude such properties, functions and capabilities are also inherent in the same structure of Stevens.

Claim 45: see col. 1, lines 12-15.

Claim 46: see points 45 in Figures.

Claim 47: see discussion of claim 44 and Claim Language Interpretation section supra.

Claims 50-54: see col. 17, line 10-col. 21, line 6 of Stevens, and thereby Van der Wielen '415 and Morman '802, e.g., col. 27, lines 20-31 of '802, the chassis can be multiple layers of gathered, i.e. extensible, material and elastic material (it is noted that the claims do not limit each of the cover and liner to one layer only), i.e. each of the cover and liner can be a gatherable or extensible layer or an elastic layer or a combination of at least one extensible layer and one elastic layer.

Claims 56-58: see col. 13, lines 42-45 of Stevens.

Claims 59-62: see portions cited with respect to claims 50-54, especially '802 at the paragraph bridging cols. 19-20 and col. 14, line 26-col 16, line 12, and '709 at col. 20, lines 28-34, i.e. the cover can be a polypropylene spunbond gatherable layer laminated with an adhesive or tacky elastic layer of SIS, and col. 13, line 54-col. 17, line 9 of Stevens, i.e. a thermoplastic nonwoven web of multi-block elastomeric copolymers.

Claims 63-65: see liner 42, tissue wrap 43, see col. 7, lines 16-19, and col. 22, line 1, col. 24, line 34.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens '709 in view of Vogt '638.

Applicant claims the chassis liner being a neck stretched spunbond web which Stevens does not teach. However, see col. 21, lines 62 et seq of Stevens and col. 7, line 54-col. 8, line 5 and col. 8, lines 21-51 of Vogt, i.e. at the very least teaches a resiliently stretchable cover or chassis can be either a stretch-bonded laminate or a laminate in which the inner layer is a neck-stretched spunbond web. Therefore to make the resiliently stretchable stretchbonded laminate of the chassis or cover of Stevens a cover or chassis of a elastic laminate in which the inner layer is a neck stretched spun bond web would be obvious in view of the interchangeability as taught by Vogt.

13. Claims 66-69 and 72-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens '709 in view of Vogt '638 and Bishop et al '166.

See discussion of claims in paragraph 10 supra. The Stevens device includes all the claimed structure except for a surge layer and its location. (It is noted with regard to claim 84

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that the terminology "low stretch" is relative absent claiming of specific dimensions of stretchability and thereby, at least one of the materials of the absorbent body is considered "low stretch material"). See, e.g., col. 3, lines 59-61 of Stevens, i.e. desires prevention of leakage. See also element 78 in the Figures of Vogt which is a surge layer and col. 3, lines 12-36 of Bishop. To employ a surge layer and one in the claimed location as taught by Vogt and Bishop on the Stevens device would be obvious to one of ordinary skill in the art in view of the recognition that such would aid in the prevention of leakage and the desirability of leak prevention by Stevens.

Response to Arguments

14. Applicant's arguments have been considered but are either deemed moot in that the issue has not been reraised or is deemed not persuasive for the reasons set forth supra.


Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
July 22, 2004